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U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

JOAQUIN RODRIGUEZ

FAA DOCKET NO. CP05SO0049
(Civil Penalty Action)

DMS NO. FAA-2005-22885

4

SHOW CAUSE ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE

This proceeding arises from a complaint served October 27, 2005, alleging violations of the Federal Aviation Act/Regulations,¹ and a request for hearing by Joaquin Rodriguez ("Respondent") dated October 14, 2005.² By Order served February 1, 2006, the undersigned noted the requirements for answering the complaint or moving for appropriate relief within 30 days after service of the complaint³ and ordered both parties to file certain documents no later than March 3, 2006.⁴ Neither party responded to the Order.⁵

¹ The complaint avers that on October 7, 2005, Respondent was advised through a Final Notice of Proposed Civil Penalty ("Final Notice") that Complainant proposed to assess a civil penalty. Complaint ¶ I. Complainant does not appear to have filed the Final Notice with the undersigned Judge nor does the Final Notice appear on the Docket Management System ("DMS").

² The return address on the envelope accompanying the request for hearing is 525 Boxwood Dr., Yaphank, NY 11967. Respondent apparently intended to write "Yaphank," not "Yahpank" since a search on the United States Postal Service website (<http://www.usps.com>) for towns in the 11967 zip code provides "Shirley, NY" and "East Yaphank, NY."

³ Order of Chief Administrative Law Judge at 1 ("Order").

⁴ Order at 2. The Order was mailed on February 1, 2006, to Respondent at 525 Boxwood Drive, N. Shirley, NY 11967 (Order at 4), which was the address shown on the certificate of service accompanying the complaint.

⁵ The Agency's Motion to Deem Allegations Admitted served February 8, 2006, "requests a ruling on this motion as soon as possible, to allow adequate preparation of a response to the . . . [Judge's] February 1, 2006 order." The date for responding to the Order served February 1, 2006, is suspended, pending resolution of this Show Cause Order.

The complaint alleges a violation of 14 C.F.R. § 121.580,⁶ and seeks a civil penalty of \$7,300.⁷ The complaint also states that Respondent is required to file a written answer or motion to dismiss not later than 30 days after the date shown on the certificate of service accompanying the complaint.⁸

By Agency's Motion to Deem Allegations Admitted ("Motion") served February 8, 2006, Complainant asserts that Respondent has not filed an answer to the complaint⁹ and moves that we deem Respondent to have admitted the truth of the allegations in the complaint and limit the hearing, if necessary, to the issue of sanctions.¹⁰ According to the Motion, Complainant mailed the complaint to Respondent at two different addresses:

"In a letter dated October 14, 2005, sent in response to a Final Notice of Proposed Civil Penalty, Respondent requested a hearing in this matter. The return address on this letter was, 'Joaquin Rodriguez, 525 Boxwood Dr., Yaphank (sic) [sic], N.Y. 11967'. *Exhibit 1.*

* * *

"On October 27, 2005, Complainant filed the complaint in this matter with the Hearing Docket and served a copy on Respondent. *Exhibit 2.* Complainant sent the complaint to 'Joaquin Rodriguez, 525 Boxwood Dr., **N. Shirley**, N.Y. 11967', Respondent's last known address and the same address to which the Final Notice was sent. North Shirley, N.Y. is another city on Long Island, New York in the same zip code. *Exhibit 3.*

* * *

"The complaint was returned to Complainant marked 'moved, left no address, unable to forward, return to sender' on November 9, 2005. *Exhibit 4.* Since that time, Complainant has made several attempts to serve the complaint on Respondent.

* * *

"Most recently, on November 25, 2005, via certified mail, Complainant sent the Respondent a copy of the complaint at 525 Boxwood Dr., **Yaphank**, NY 11967. After several attempts at delivery, the U.S. Post Office returned the complaint and

⁶ 14 C.F.R. § 121.580 states that "no person may assault, threaten, intimidate, or interfere with a crew-member in the performance of the crewmember's duties aboard an aircraft being operated under this part."

⁷ Complaint ¶ III.

⁸ Complaint at 2.

⁹ Motion ¶ 7.

¹⁰ Motion at 4. The Motion was mailed to Respondent at 525 Boxwood Dr., Yaphank, NY 11967. Motion at 5 ("Motion Certificate of Service"). The Motion does not appear to have been sent to FAA's Hearing Docket and does not appear on DMS. Each party is ordered to ensure that all of its pleadings have been received by the FAA's Hearing Docket.

marked it 'Unclaimed'. *Exhibit 5*.

* * *

"Another copy of the complaint was sent to Respondent via regular 1st class U.S. Mail on December 27, 2005. *See, Exhibit 5*. This copy of the complaint has not been returned."¹¹

Respondent has not opposed the Motion.

The Rules of Practice¹² provide a respondent with the opportunity to request a formal hearing to challenge a proposed enforcement action by complainant.¹³ Such a hearing is provided for the benefit, and at the option, of the respondent. To preserve this opportunity, a respondent must comply with the Rules of Practice and the Judge's orders.¹⁴ The Rules of Practice provide that an administrative law judge may regulate the course of the hearing and hold pre-hearing conferences with the parties to explore settlement possibilities and to clarify the issues involved.¹⁵ To facilitate this process, a respondent must keep the judge apprised of his or her whereabouts.¹⁶ By failing to do so, a respondent forfeits the opportunity to challenge complainant's proposed action at a hearing.¹⁷

The Rules of Practice require Respondent to file a response to the complaint—either an answer pursuant to 14 C.F.R. § 13.208(d) or a motion pursuant to 14 C.F.R. § 13.218(f)(1-4)—

¹¹ Motion ¶¶ 1-5 (emphasis in original).

¹² 14 C.F.R. Part 13, Subpart G (Rules of Practice in FAA Civil Penalty Actions) ("Rules of Practice").

¹³ 14 C.F.R. § 13.35 (Request for hearing).

¹⁴ *Thomas M. Tribbett, Jr.*, FAA Docket No. CP05EA0002, DMS No. FAA-2005-20324, Show Cause Order of Chief Administrative Law Judge, at 3 (Dec. 2, 2005); *Redford Forwarding Co., Inc.*, FAA Docket No. CP01EA0002, DMS No. FAA-2001-8997, Order to Show Cause of Chief Administrative Law Judge, at 6 (Oct. 3, 2002).

¹⁵ *Thomas M. Tribbett, Jr.*, at 3; *Redford Forwarding Co., Inc.*, at 6 & n.25 (citing 14 C.F.R. § 13.205(a)(6)-(7)).

¹⁶ *Thomas M. Tribbett, Jr.*, at 3; *Redford Forwarding Co., Inc.*, at 6 & n.26 (noting that the regulation's definition of "properly addressed" contemplates that a respondent must provide the complainant and the administrative law judge with his or her current address).

¹⁷ *Thomas M. Tribbett, Jr.*, at 3; *Redford Forwarding Co., Inc.*, at 7 (finding that respondent's neglect had made impossible scheduling a prehearing conference, preparing for a hearing, or giving notice of such a hearing; that nothing in the record suggested that respondent could be "contacted through any address or telephone number or that a hearing notice would reach Respondent or elicit a response"; and that, because the law did not require performance of a useless act, no reason existed to schedule a hearing when respondent was unreachable and unresponsive).

not later than 30 days after service of the complaint.¹⁸ When service is by mail, 5 days are added to the prescribed period.¹⁹ Accordingly, even if time for responding to the complaint was based on the latest date of service, i.e., December 27, 2005,²⁰ Respondent's written answer or motion would have been due no later than Tuesday, January 31, 2006.

One who fails without good cause to respond to a complaint is deemed to admit the truth of each allegation contained in the complaint.²¹ The law does not favor such default judgments, and we understand that § 13.209(f) is intended to ensure that a respondent will file a meaningful answer—not to set a default trap for the unwary.²² Accordingly, we have refused to grant default judgments when respondents may have been confused by the technical requirements.²³

¹⁸ 14 C.F.R. § 13.209(a) (“respondent shall file a written answer to the complaint, or may file a written motion pursuant to § 13.208(d) or § 13.218(f)(1–4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint”).

¹⁹ 14 C.F.R. § 13.211(c).

²⁰ Service by mail occurs on “the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.” 14 C.F.R. § 13.211(d). Service of a document “that was returned, that was not claimed, or that was refused” is valid if the document “was properly addressed [and] was sent in accordance with [the Rules of Practice],” and such service is “considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.” 14 C.F.R. § 13.211(g). A “properly addressed” document is “a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.” 14 C.F.R. § 13.202.

²¹ 14 C.F.R. § 13.209(f).

²² *Thomas M. Tribbett, Jr.*, at 4; *In re Safety Equip. and Sign Co., Ltd.*, FAA Docket No. 90-226 (HM), FAA Order No. 92-76, Decision and Order, at 5 (Dec. 21, 1992) (Richards, Adm'r) (“Wherever possible, cases should be disposed of on the merits after a hearing, rather than summarily because of a procedural defect.”); *In re David Lloyd Cornwall*, FAA Docket No. CP90AL0295, FAA Order No. 92-47, Decision and Order, at 7 (July 22, 1992) (Richards, Adm'r) (same).

²³ *Dave L. Turner*, FAA Docket No. CP89WP0060, Order of Administrative Law Judge, at 2-3 (Aug. 22, 1989) (treating as an answer the respondent's letter to a special agent before the proceeding was initiated, which “essentially denied the violation and put in issue the level of the penalty,” and respondent stated that he believed he had timely signed and mailed what he believed to be an answer); *Carrie Carmen Helbert*, FAA Docket No. CP89WP0073, Order of Administrative Law Judge, at 1-2 (Aug. 17, 1989) (treating as an answer respondent's letter to the deputy assistant chief counsel in response to the notice of proposed civil penalty, when the letter “essentially acknowledged the violation and put in issue the level of the penalty”); *Dawn M. Lewis*, FAA Docket No. CP89SO0108, Order of Administrative Law Judge, at 2-4 (July 17, 1989) (finding good cause to accept a late answer, where respondent provided a detailed response to complainant's questions about the incident, wrote a letter requesting an “appeal” and, after receiving the complaint, sent a letter to the docket clerk before the answer was due, requesting a hearing and asking the docket clerk to inform her if anything further were required).

An untimely answer may only be excused for good cause.²⁴ When deciding whether good cause exists, we look to why the document was filed late.²⁵ Good cause for failure to respond in a timely manner has been found to exist where respondent's counsel, who was inexperienced in FAA civil penalty proceedings, miscalculated the deadline for perfecting an appeal, noting that counsel had taken "steps to protect against the danger of default," such as reviewing the Rules of Practice and drafting an internal memorandum for others in his firm regarding calendaring of the appeal.²⁶ In addition, good cause for failing to file a timely answer has been found to exist when "(a) [respondent's] counsel did not know that a complaint had been filed until a motion for decision was filed because counsel had been having problems with an employee's not notifying him of served documents . . . ; (b) counsel acted promptly to cure the default upon learning of it; (c) the default caused only minimal delay; and (d) complainant did not claim prejudice."²⁷ The Administrator has also found good cause for failing to file a timely answer when "(a) the complaint was 'silent' concerning the requirement for an answer; (b) it was not respondent who committed the mistake, but his counsel . . . ; and (c) it was still early in the proceedings and complainant did not appear to have been prejudiced by the late-filing."²⁸

²⁴ *Thomas M. Tribbett, Jr.*, at 4; *In re Larry's Flying Serv., Inc.*, FAA Docket No. CP97AL0002, FAA Order No. 98-4, Decision and Order, at 2 (Mar. 12, 1998) (Garvey, Adm'r); *Kinley Constr.*, FAA Docket No. CP03SO0003, DMS No. FAA-2003-14230, Show Cause Order of Chief Administrative Law Judge, at 2 (Oct. 1, 2003).

²⁵ *Thomas M. Tribbett, Jr.*, at 4; *In re Carl P. Langton*, FAA Docket No. CP92AL0417, FAA Order No. 93-12, Decision and Order, at 7 (Mar. 25, 1993) (Del Balzo, Act'g Adm'r); *In re Michael John Costello*, FAA Docket No. CP89WP0351, FAA Order No. 92-1, Order Granting Reconsideration and Partially Granting Appeal, at 5 (Jan. 9, 1992) (Harris, Act'g Adm'r); *Kinley Constr.*, FAA Docket No. CP03SO0003, at 2; *Ryan Int'l Airlines, Inc.*, FAA Docket No. CP99GL0011, DMS No. FAA-1999-5805, Order of Acting Chief Administrative Law Judge, at 2 (July 20, 1999), *aff'd*, FAA Order No. 2000-2, Decision and Order, at 5 (Feb. 3, 2000) (Garvey, Adm'r).

²⁶ *In re Warbelow's Air Ventures, Inc.*, FAA Docket No. CP97AL0012, FAA Order No. 99-4, Order Denying Complainant's Motion to Dismiss but Granting Additional Time for Reply Brief, at 2-3 (July 1, 1999) (Leemon, Mgr., Adj'n Br.).

²⁷ *Larry's Flying Serv.*, FAA Docket No. CP97AL0002, Order Deeming Allegations Admitted and Assessing Civil Penalty, at 6 (July 3, 1997) (Maurer, C.J.) (citing *Safety Equip.*, FAA Order No. 92-76, at 5), *aff'd*, FAA Order No. 98-4 (Mar. 12, 1998).

²⁸ *Id.* (citing *In re David Lloyd Cornwall*, FAA Docket No. CP90AL0295, FAA Order No. 92-47, Decision and Order, at 5 (July 22, 1992) (Richards, Adm'r)).

On the other hand, good cause has not been found to exist, and civil penalties have been assessed, where a respondent neglected to explain an untimely filing.²⁹ In *Larry's Flying Service*, the Administrator rejected a respondent's argument that its late-filed answer should be excused due to confusion on the part of its counsel, citing a number of factors that should be considered in determining good cause: (1) whether the complaint included a reminder concerning the answer requirement; (2) whether the respondent was represented by counsel and filed some type of post-complaint document contesting the allegations against it; (3) whether the respondent's counsel had taken any specific precautions to avoid the risk of default; (4) whether the administrative law judge said or did anything that would mislead a reasonable person; and (5) whether agency counsel said or did anything that would mislead a reasonable person.³⁰ In that case, the respondent's counsel had represented the respondent in two previous civil penalty cases and had failed to support his claim of confusion with an affidavit or other evidence. In addition, the complaint contained a reminder of both the deadline for filing an answer and the consequences of failing to comply, and the record did not indicate that the administrative law judge or opposing counsel said or did anything that would have misled a reasonable person regarding the deadline for filing an answer.³¹

Although a default is a severe penalty for failure to file an answer, the rule is clear and does not permit an exception unless a respondent shows good cause.³² To date, Respondent has

²⁹ See, e.g., *Ingram Daigs James*, FAA Docket No. CP01WP0023, DMS No. FAA-2001-9535, Order of Acting Chief Administrative Law Judge, at 4 (May 11, 2001), *appeal dismissed*, FAA Order No. 2002-1, Order Dismissing Appeal, at 1 (Jan. 11, 2002) (Leemon, Mgr., Adj'n Br.); *Encore Vehicles, Inc.*, FAA Docket No. CP00SO0033, DMS No. FAA-2001-8653, Order of Acting Chief Administrative Law Judge, at 1-2 (May 2, 2001).

³⁰ *Larry's Flying Serv.*, FAA Order No. 98-4, at 5-6.

³¹ *Id.*

³² *Id.* at 7; *In re Atlantic World Airways, Inc.*, FAA Docket No. CP95SO0063, FAA Order 95-28, Order of Dismissal, at 4 (Dec. 19, 1995) (Hinson, Adm'r); *In re Mark Steven Diamond*, FAA Docket No. CP94NM0105, FAA Order No. 95-10, Order and Decision, at 3 (May 10, 1995) (Hinson, Adm'r); *In re Jimmy Lee Harkins*, FAA Docket No. CP93AL0214, FAA Order No. 94-22, Decision and Order, at 4 & n.10 (June 22, 1994) (Hinson,

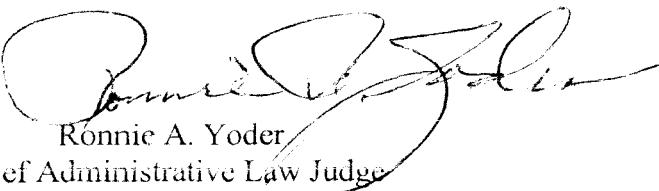
not answered the complaint or moved for other appropriate relief, as required by 14 C.F.R. § 13.209(a). In addition, Respondent has not responded to the Order, served February 1, 2006,³³ or to the Motion, served February 8, 2006. Since Respondent provided a return address on the envelope accompanying its request for hearing, a copy of the Order and this Show Cause Order will be sent to that address (in Yaphank, NY not Yahpank, NY) as well as the address provided in the certificate of service accompanying the Order.

Accordingly, IT IS ORDERED THAT:

1. Respondent, on or before April 21, 2006, shall serve, file, and deliver to the Judge a response indicating why the allegations of the complaint should not be deemed admitted and an order assessing civil penalty be issued against him.³⁴

2. Absent such a response from Respondent, judgment will be entered against Respondent in the amount of \$7,300.

SO ORDERED.


Ronnie A. Yoder
Chief Administrative Law Judge

Attachment – Service List

Adm'r); *Kinley Constr.*, FAA Docket No. CP03SO0003, DMS No. FAA-2003-14230, Show Cause Order of Chief Administrative Law Judge, at 2, 4 (Oct. 1, 2003).

³³ See *supra* note 5 and accompanying text.

³⁴ See, e.g., *KDW Schools d/b/a Int'l Aviation and Travel Academy*, FAA Docket No. CP02SW0010, DMS No. FAA-2002-12883, Order of Chief Administrative Law Judge, at 1 (May 10, 2005).

SERVICE LIST

ORIGINAL & ONE COPY

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Att: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014³⁵

ONE COPY

Joaquin Rodriguez
525 Boxwood Drive
N. Shirley, NY 11967

Joaquin Rodriguez
525 Boxwood Drive
Yaphank, NY 11967

Gerald A. Ellis, Attorney
Office of the Regional Counsel
Southern Region, ASO-7
Federal Aviation Administration
P.O. Box 20636
Atlanta, GA 30320
TEL: (404) 305-5200
FAX: (404) 305-5223

The Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590
TEL: (202) 366-2142
FAX: (202) 366-7536

³⁵ Service was by U.S. Mail. For service in person or by expedited courier, use the following address:
Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building –
Room 2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.